

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

DJ MANUFACTURING CORPORATION,	X	
	:	
Plaintiff,	:	
	:	
vs.	:	CIVIL NO. 97-1457(JAG)
	:	
TEX-SHIELD, INC.;	:	
XYZ INSURANCE COMPANIES,	:	
	:	
Defendants.	:	
	X	

**Reply Memorandum in Further Support of
Defendant Tex-Shield, Inc.'s Urgent Motion to
Compel Deposition in Aid of Execution of
Judgment and for Sanctions**

COMES NOW DEFENDANT Tex-Shield, Inc. ("Tex-Shield") through its undersigned counsel and respectfully submits its reply to Plaintiff's Opposition to Defendant Tex-Shield Inc.'s Urgent Motion to Compel Deposition in Aid of Execution of Judgment, and for Sanctions.

In response to Tex-Shield's application for an order compelling DJ to appear for deposition and produce documents (Docket # 146), DJ contends that its ever-imminent filing of a bond warrants ignoring Tex-Shield's discovery and denying the instant motion. There is no stay of proceedings to enforce the judgment, however, absent the actual filing of a supersedeas bond and this Court's approval of it. Fed. R. Civ. P. 62(d). Although DJ has been claiming since November 15th that it was arranging to file a bond (see attached letter from

Eugene Hestres to Katarina Stipeć, dated November 15, 2004), no bond has been filed, much less approved by the Court. Accordingly, Tex-Shield's discovery should proceed.

DJ also should be sanctioned. By DJ's own admission in its Motion for Extension of Time to File Notice of Appeal (Docket # 142), DJ has been aware of the Court's September 23, 2004 Final Judgment on Arbitral Award at least since October 21, 2004—more than six weeks ago. Tex-Shield served its discovery request on October 26, 2004. DJ nevertheless waited until the eve of the deposition weeks later to advise us it would not comply, blithely allowing Tex-Shield to go to the expense of preparing for the deposition.

DJ's opposition to this motion further evidences DJ's contumacious behavior in its distortion of the facts. DJ falsely asserts that Tex-Shield "consented to the cancellation of the deposition the day before it was scheduled without objection." Opp. Br. at 2. Tex-Shield's counsel never consented to cancel the deposition or otherwise to relieve DJ of its obligation to comply with Tex-Shield's discovery, but rather merely acknowledged DJ's unilateral decision that it would not attend the deposition and advised opposing counsel that Tex-Shield would move for relief.

Rather than permitting DJ to get away with its bad conduct on the illusory promise of a bond, Tex-Shield respectfully asks this Court to require DJ (i) to provide the requested discovery, and (ii) to pay Tex-Shield's costs and attorneys fees as a sanction.

Respectfully submitted in San Juan, Puerto Rico on this 3rd day of December 2004.

I hereby certify that on December 3, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of the filing to the following: Eugene F. Hestres, Esq. and Alicia Santos, Esq., Bird, Bird & Hestres, P.O. Box 9023128, San Juan, Puerto Rico 00902-3128; and will separately mail to Marc Lamer, Esq., Kostos & Lamer, P.C., 1608 Walnut Street, Suite 1300, Philadelphia, Pennsylvania 19103.

s/ Pedro Jiménez

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